133

NO. 09-66

Supreme Court, U.S.
FILED
JUL 16 2009
OFFICE OF THE CLERK

In The
Supreme Court of the United States

COLLIER DOUGLAS SESSOMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: July 16, 2009

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QUESTION PRESENTED

I. WHETHER THE DISTRICT COURT'S SENTENCE IS CONTRARY TO THE FIFTH, FOURTEENTH, AND EIGHTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

PARTIES TO THE PROCEEDING

The parties to this proceeding are petitioner Collier Douglas Sessoms and the United States of America

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OPINION BELOW

The Judgment of the Fourth Circuit Court of Appeals, dated April 14, 2009, affirming Petitioner's conviction and sentence, is reprinted on page 1 of the Appendix.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on April 14, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Eighth Amendment to the United States Constitution provides as follows:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; . . ."

2. The Fourteenth Amendment to the United States Constitution provides as follows:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law ..."

3. The Fifth Amendment to the United States Constitution provides as follows:

> No person shall be ... deprived of life, liberty, or property, without due process of law

STATEMENT OF THE CASE

On July 26, 2006 the government filed its indictment against the Petitioner, Collier Douglas Sessoms. (JA 12). Mr. Sessoms was charged with allegedly violating 18 U.S.C. § 2252(a)(2), (a)(4)(B), 18 U.S.C. § 2256(8), 1462, and 1465. (JA 8-167).

On August 17, 2006, attorney, Dennis H. Sullivan, Jr. entered his appearance on behalf of the Petitioner (JA 3). On December 11, 2006, Mr. Sessoms entered a plea of guilty to counts 1 and 4 of the indictment (JA 17-25). Mr. Sessoms was sentenced on March 17, 2008 by the Honorable W. Earl Britt. Judge Britt sentenced the Petitioner to a term of 235 months on Count one and 60 months for count two to be served concurrently (JA 80). Mr. Sessoms timely filed his notice of appeal (JA 86).

The Fourth Circuit entered their order granting the government's motion to dismiss on April 14, 2009. The court cited that the Petitioner knowingly waived his rights to appeal and that none of the Petitioner's alleged constitutional violations were outside the scope of the waiver. The court's judgment dismissing the appeal was entered on April 14, 2009.

Mr. Sessoms is a 32-year-old white male who suffers from borderline intellectual functioning. He has an IQ of approximately 74, which is a borderline IQ for retardation (JA 125-126). These results were obtained from testing performed by Harvard trained physician/psychiatrist Dr. Renee Sorrentino (JA 98).

Mr. Sessoms has no prior criminal history who worked as a volunteer firefighter and was trying to become an EMT at the time of the indictment. He has always worked and paid taxes (JA 98-99).

According to the Petitioner's pre-sentence report, on or about August 1, 2005, investigators from Bergen County New Jersey notified the North Carolina SBI about a potential sex crime case involving the Petitioner (JA 92).

The investigators from Bergen County informed the North Carolina SBI that Detective Reich from their office had been in contact with the Petitioner for over two months and that during that time the Petitioner made numerous statements referring to having sex with children (JA 92).

On August 8, 2005, the Petitioner was arrested and charged with two counts of statutory sex offense with a child. His home was searched and his computer was seized. Images of child pornography were found on the computer (JA 92-96) He was charged with the indictment in this matter on July 26, 2006. The charges were: 1) transmission of pornography; 2) receipt of child pornography; 3) possession of child pornography; 4&5) two counts of

transportation of obscene matters over the Internet (JA 12-16).

The Petitioner pleaded guilty pursuant to a plea agreement on December 11, 2006 (JA 25). The plea agreement contained an appeal waiver. The plea stipulated that the Petitioner would plead guilty to counts 1 and 4 and the government would dismiss counts 2, 3, and 5 of the indictment at sentencing. Both parties agreed to a base offense level of 22 pursuant to U.S.S.G. § 2G2.2(a)(2), a 2 level enhancement for material involving a prepubescent minor or a minor less than 12 years of age pursuant to U.S.S.G. § 2G2.2(b)(2), a 2 level enhancement for the distribution of child pornography under U.S.S.G. § 2G2.2(b)(3)(F), a 5 level enhancement for engaging in a pattern of activity involving sexual abuse of a minor under U.S.S.G. § 2G2.2(b)(5), a 2 level enhancement for the use of a computer or interactive service under U.S.S.G. § 2G2.2(b)(6), a 4 level increase for more than 300 but less than 600 images under U.S.S.G. § 2G2.2(b)(7)(C), a downward adjustment of 3 levels for acceptance of responsibility. The pending state charges were to be dismissed upon sentencing in this federal case (JA 17-25).

The plea itself contained and appeal waiver. Paragraph 2(c) of the plea agreement states that the defendant knowingly agrees:

> "to waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal whatever sentence is imposed, including any issues that relate to the

> establishment of the advisory guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory guideline range that is established at sentencing..." (JA 17-18).

At sentencing the alleged victim's father and stepmother made a statement. The stepmother's statements at issue are as follows:

> "I am not the biological mother of these children, but I've been in their life for four years. What I failed t hear here from Mr. Sessoms is any acknowledge[sic] or responsibility. Any acknowledgement or responsibility for the crime against A.L. and D.L. (names omitted) You want to talk about low IQ, Austin has Down's Syndrome, but he knows right and wrong, and he knows that this is not he right thing to do. Collier Sessoms had a choice, no matter what anybody said to him, what pressure he felt. We all go through things in life but we have a choice. If you've got such a good support system, he had somebody to go talk to. We've all had situation in our life where we've been down.
>
> I'm a very high functioning individual, but I go through a series of either up or down. There's not a lot of middle ground with me. I could have been

classified as having recurrent depression. But I don't hurt children. I don't view pornography with children being hurt in it.

We didn't know. We knew something was not right. And we had questioned the children's mother and had asked her to question Mr. Sessoms. We thought, due to the behavior, A.L. the one with the Down's Down does not communicate very well. You cannot understand him when he speaks, and it's due to his Down's syndrome and disability.

He would act out very inappropriate, I guess using sexual motions. This started happening. We started asking questions, Any my mind does not go to hurting or having sex with children. The first thought in my mind was the A.L. and D.L. had walked in on Mr. Sessoms and Mrs. Leighton in the middle of being intimate. So john had called and had asked and let them know something wasn't quite right.

These boys have been through a lot. Not only D.L.. At the time Mr. Sessoms thought he had perfect victims. D.L. the youngest, at five years old, had a serious (JA 142-148).

A.L. can't tell us what's going on with him. He went through--- around a

> certain time of year, he goes though, since this has happened, very aggressive periods (JA 144).
>
> He's got two direct victims and four indirect ones. I've got two teenagers that don't get to do things that we used to do for fear- if John and I both can't be there with the boys in a strange environment, we don't know what their behavior is going to be." (JA 146).

The District Court Judge gave the Petitioner a 4-level enhancement for material involving sadistic or masochistic conduct or their depictions of violence. The Petitioner did not stipulate to this in the plea agreement and there was no evidence presented to show that material involved sadistic[1] or masochistic[2] images.

The evidence did show the only place where photos that could be considered sadistic were found

---

[1] Sadistic: defined as A form of perversion, often sexual in nature, in which a person finds pleasure in inflicting abuse and maltreatment. http://dictionary.webmd.com/terms/sadism

[2] Masochist: defined as Passive algolagnia; a form of perversion, often sexual in nature, in which a person experiences pleasure in being abused, humiliated, or maltreated. Cf.: sadism http://dictionary.webmd.com/terms/masochism

were in the computer's cache[3]. The total amount of these types of photos was approximately 2% of the total amount of photos (JA 105).

At sentencing the District Court limited the number of character evidence in the form of letters (JA 149-152).

REASONS WHY THE WRIT SHOULD BE GRANTED

I. THE COURT SHOULD GRANT THIS WRIT BECAUSE THE FOURTH CIRCUIT'S DECISION UPHOLDING THE DISTRICT COURT VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHTS BY DISMISSING THE APPEAL.

The district court entered it's order dismissing the Petitioner's appeal without even hearing oral argument. The appeal waiver should be invalidated and the Petitioner should be able to exercise his right to appeal his sentence because the court

---

[3] Cache" is a specialized form of computer memory. In the case of Internet, "cache" is commonly used in the context of "browser cache". Cache is designed to speed up the computer by prioritizing its contents for quick access. How it works: cache holds copies of recently accessed data such as a web page and pictures on web pages. It keeps this data ready to "swap" onto your screen within fractions of a second. So, instead of requiring your computer to go to the original web page and photos in Denmark, the cache simply offers you the latest copy from your own hard drive. This caching-and-swapping speeds up page viewing because the next time you request that page, it is accessed from the cache on your computer instead of from the distant Web server. http://netforbeginners.about.com/od/c/g/def_cache.htm

violated his constitutional rights by: 1) allowing improper victim statements at the sentencing hearing, 2) limiting the amount of character evidence that was allowed to be submitted, and 3) applying a 4 level enhancement for possession of sadistic or masochistic photos found in the cache of the Petitioner's computer.

One of the fundamental laws of contracts is that you must have a meeting of the minds in terms of what each party contemplates they will be receiving from the agreement. When the Petitioner signed his plea agreement he did not contemplate that the sentencing court would violate his constitutional rights. Even if he would have agreed to have his constitutional rights violated, that agreement should be void against public policy.

A. THE FOUR LEVEL ENHANCEMENT UNDER U.S.S.G. § 2G2.2(b)(4).

The Fourth Circuit agreed that the district court judge's decision to apply a four-level enhancement under U.S.S.G. § 2G2.2(b)(4) was made over counsel for the Petitioner's objection. The images in question were never presented to the sentencing court. The district court merely relied on the government's allegation to the probation office as to the content of the pictures. The alleged sadistic material consisted of approximately less than 2% of the contraband contained on Petitioner's computer. These photos were largely located in the cache of Petitioner's computer. A cache is what a computer uses to speed up the loading of internet pages. If an

individual goes to a web-site he/she has no control over what is placed in the computer's cache. The computer's browser automatically downloads the images to the Cache.

For instance, assuming a computer's internet history and cache files are empty, if a person goes to Foxnews.com first thing in the morning to check the news there are a great deal of pictures, headlines, and other things contained on the page. When the page loads on the computer, the internet browser being utilized (whether it be Internet Explorer, Safari, FireFox, etc.) downloads each image located on the foxnews.com web-site into the computer's cache. This was very useful during the dial-up years because it essentially allowed pages you have visited to come up faster because the data is already stored on the computer's hard drive. The files download whether a person returns to the page or not. The computer anticipates a return to the site so it stores the data in the cache. In other words, the headline on today's front page of Foxnews.com as well as every other picture that is on that page is on the computer. These could all be located at a later time during a forensic examination of the computer. Most people are completely unaware that their computer is storing all of this data.

Absent a showing by the government that the defendant was aware of these items stored in his cache, or a showing that he tried to access them, it is patently unfair to apply such a harsh enhancement in this case. The four-level increase for this enhancement raised his final advisory guideline range from 151-188 months to 235 to 293 months.

Using a cache file is when applying advisory guidelines and increasing an individual's sentence so substantially is unfair. The computer downloaded the pictures that were on web pages visited by the Petitioner. It is undisputed that images in the Cache are not for viewing, and there is no evidence to suggest that the Defendant ever made an effort to retrieve them The Petitioner did not even know he had them.

B. THE EIGHTH AND FOURTEENTH AMENDMENT CLAIMS.

The Fourth Circuit also agreed the Supreme Court's decisions recognize that the Eighth Amendment's Cruel and Unusual Punishments Clause encompasses a narrow proportionality principle that applies to noncapital sentences. See, *e.g.*, *Weems v. United States*, 217 U.S. 349, 371; *Rummel v. Estelle*, 445 U.S. 263, 271-274, and n. 11; *Hutto v. Davis*, 454 U.S. 370, 374, and n. 3; *Solem v. Helm*, 463 U.S. 277. Although these decisions have not been totally clear or consistent, close analysis yields some common principles that give content to the uses and limits of proportionality review. First, the fixing of prison terms for specific crimes involves a substantial penological judgment that, as a general matter, is properly within the province of the legislature, and reviewing courts should grant substantial deference to legislative determinations. Second, there are a variety of legitimate penological schemes based on theories of retribution, deterrence, incapacitation, and rehabilitation, and the Eighth Amendment does not mandate adoption of any one such scheme. Third, marked divergences both in

sentencing theories and the length of prescribed prison terms are the inevitable, often beneficial, result of the federal structure, and differing attitudes and perceptions of local conditions may yield different, yet rational, conclusions regarding the appropriate length of terms for particular crimes. Fourth, proportionality review by federal courts should be informed by objective factors to the maximum extent possible, and the relative lack of objective standards concerning length, as opposed to type, of sentence has resulted in few successful proportionality challenges outside the capital punishment context. Finally, the Eighth Amendment does not require strict proportionality between crime and sentence, but rather forbids only extreme sentences that are grossly disproportionate to the crime. *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680 (1991).

The Supreme Court outlined framework for drawing the line between the legitimate and illegitimate uses of victim impact evidence. The Court found that "in the majority of cases . . . victim impact evidence serves entirely legitimate purposes." *Payne v. Tennessee*, 501 U.S. 808 (1991). But it concluded that "in the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." *Id.* at 825.

Petitioner was sentenced to 235 months plus 60 months running concurrently. He presents with a 74 IQ and was suffering from undiagnosed

depression "borderline retardation/borderline IQ. (Sentencing transcript page 16-18).

Counsel does not dispute that a victim's statement has its place at a sentencing. What the undersigned does dispute it allowing the victim's stepmother to speak at length on medical and legal issues without being sworn to her statements or subjected to cross-examination. It is clear that these statements had a significant impact on the Court's ultimate sentence (J.A. 142-148).

At the sentencing hearing, the stepmother of the children, Ms. Leighton, had know the children for approximately 3 years, only one of which was prior to the alleged acts. At the time of the alleged acts she was the girlfriend of the father. The extent of her involvement with the children prior to the alleged acts is unclear as the defendant was unable to cross-examine her (JA 142-148).

At the sentencing hearing the step-mother addressed the court regarding the fact that, in her opinion Petitioner had not accepted responsibility through his statement. She spoke about the children, one of which suffers from Down's syndrome, acting out inappropriately. She stated that the acting out was "I guess using sexual motions." (JA 142-148).

She stated that the child with Down's syndrome acts out inappropriately and has aggressive periods of behavior. She stated that the other child has ADHD and acts out inappropriately.

She directly linked this behavior to the alleged conduct by Petitioner.

These statements were legal conclusions, as well as medical and psychiatric diagnoses. Given the amount of weight placed upon these by the court, the defendant was deprived of a substantive right, namely, the right to confront and cross-examine witnesses against him

The statements also violated the Petitioner's Eighth Amendment right to be free from cruel and unusual punishment because of the prejudicial nature of the statements.

The Court considered these statements for an improper purpose when sentencing the defendant. The witness testified regarding events outside the scope of the offenses of conviction. The victim impact evidence should have only been considered with regard to whether the court should, in its discretion, apply the enhancement in U.S.S.G § 2G2.2(b)(5), as stipulated in the plea agreement. Since the evidence did not involve the offenses of conviction, but rather matters which would not ordinarily be considered relevant conduct absent the stipulation in the instant case, the Court placed too much emphasis on it (beyond the enhancement) in imposing sentence. Statements of this type and gravity should be subjected to the constitutional protections of the Confrontation Clause of the United States Constitution.

Certainly, the trial court erred by overruling the counsel's objection to the prejudicial unsworn

testimony, and by not offering to allow the Defendant to cross-examine the witness or offer rebuttal evidence. By doing so, the Court violated the Petitioner's Constitutional rights.

CONCLUSION

Based on the above mentioned constitutional violations and the effect they had of invalidating their appeal waiver, Petitioner respectfully submits that this Honorable Court should grant his petition for writ of certiorari to review the constitutionality of his sentence.

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Counsel for Petitioner

Dated: July 16, 2009

FILED: April 14, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4379
(7:06-cr-00063-BR-1)

UNITED STATES OF AMERICA,
Plaintiff - Appellee

v.

COLLIER DOUGLAS SESSOMS,
Defendant - Appellant

J U D G M E N T

In accordance with the decision of this Court, this appeal is dismissed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

[FILED: March 17, 2008]

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

COLLIER DOUGLAS SESSOMS

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:06-CR-63-1 BR

USM Number:70170-056

Dennis H. Sullivan, Jr.
Defendant's Attorney

THE DEFENDANT:

[X] pleaded guilty to count(s) 1 & 4 of Indictment

[ ] pleaded nolo contendere to count(s) ___ which was accepted by the court.

[ ] was found guilty on count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2252(a)(1)	Transmission of child pornography	8/6/2005	1
18 USC § 1462	Transportation of obscene matters over the internet	8/6/2005	4

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) ___

[X] Count(s) 2, 3 & 5 of Indictment [ ] is [X] are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30

days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Sentencing Location:
Raleigh, NC

3/17/2008
Date of Imposition of Judgment

/s/
Signature of Judge

W. EARL BRITT, SENIOR US DISTRICT JUDGE
Name and Title of Judge

03.25.08
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Count 1 of Indictment - 235 months
Count 4 of Indictment - 60 months, to be served concurrently with Count 1

[X] The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant be allowed to serve the confinement portion of his sentence at FCI Butner if he so qualifies and that he receive treatment for any medical conditions, such as diabetes and high blood pressure issues, and that he receive credit for any time served while in state custody.

[X] The defendant is remanded to the custody of the United States Marshal.

[ ] The defendant shall surrender to the United States Marshal for this district:

[ ] at ___ [ ] a.m. [ ] p.m. on ___
[ ] as notified by the United States Marshal.

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

[ ] [ ] before p.m. on ___
[ ] [ ] as notified by the United States Marshal.
[ ] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ___ to___ a ___, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Total Term of Life: (Count 1 of Indictment - life; Count 4 of Indictment - 3 years to run concurrently with Count 1)

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

[ ] The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

[X] The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

[X] The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

[X] The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

[ ] The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer.

2. The defendant shall report to the probation officer as directed by the court or probation

officer and shall submit a truthful and complete written report within the first five (5) days of each month.

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4. The defendant shall support the defendant's dependents and meet other family responsibilities.

5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6. The defendant shall notify the probation officer at least then (10) days prior to any change of residence or employment.

7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician.

8. The defendant shall not frequent places where controlled substances are illegally sold, used distributed, or administered, or other places specified by the court.

9. The defendant shall not associate with any persons engaged in criminal activity, and

shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10. The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall submit a written weekly report to the probation office, if not regularly employed, of attempts to secure gainful employment.

The defendant shall participate in mental health/sex offender treatment, evaluation testing, clinical polygraphs and other assessment instruments as directed by the probation officer. While under supervision in the Eastern District of North Carolina, the defendant shall further abide by the rules and regulations of the NCE Sex Offender Program.

The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$200.00	$5,000.00	$

[ ] The determination of restitution is deferred until ___. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

[ ] The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	
Restitution Ordered	**Priority or Percentage**	
TOTALS	$0.00	$0.00

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

[ ] Restitution amount ordered pursuant to plea agreement $ _____

[ ] The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

[X] The court determined that the defendant does not have the ability to pay interest and it is ordered that:

[X] the interest requirement is waived for the [X] fine [ ] restitution.

[ ] the interest requirement for the [ ] fine [ ] restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A [ ] Lump sum payment of $ ___ due immediately, balance due

[ ] not later than , or
[ ] in accordance [ ] C, [ ] D, [ ] E, or [ ] F below; or

B [ ] Payment to begin immediately (may be combined with [ ] C, [ ] D, or [ ] F below); or

C [ ] Payment in equal ___ (e.g., weekly, monthly, quarterly) installments of $ ___ over a period of ___ (e.g., months or years), to commence ___ (e.g., 30 or 60 days) after the date of this judgment; or

D [ ] Payment in equal ___ (e.g., weekly, monthly, quarterly) installments of $ ___ over a period of ___ (e.g., months or years), to commence ___ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E [ ] Payment during the term of supervised release will commence within ___ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F [X] Special instructions regarding the payment of criminal monetary penalties:

> **Special assessment shall be due immediately. Payment of the total fine only shall be due in full immediately.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

[ ] Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall pay the following court cost(s):

[X] The defendant shall forfeit the defendant's interest in the following property to the United States:

> as specified in the Final Order of Forfeiture entered on March 7, 2007.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.